FILE
DEC 31

No. 80-586
IN THE

Supreme Court of the United States

October Term, 1980

CHEVRON SHIPPING COMPANY (STANDARD OIL COMPANY OF CALIFORNIA),

Petitioner,

vs.

GILBERT A. BAPTISTE,

Respondent.

On Writ of Certiorari to the Court of Appeal of California, Second Appellate District — Division One.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

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Questions Presented.

1. Should not this Honorable Court refuse to review a pre-trial ruling, relating to state court pleadings, which permits the respondent GILBERT A. BAPTISTE, the plaintiff in an action pending for trial in a trial court of the State of California, to allege in his pleading that certain conduct of defendant warrants the recovery of punitive damages?

2. Should this Honorable Court act at this preliminary and premature stage for the purpose of fashioning and enunciating a rule that owners of vessels and employers of seamen are to be accorded a special exemption from the universal rule respecting liability for punitive damages?

3. Is it not the long-standing and well-settled basic rule of the common law and of maritime law that a tort defendant whose conduct is of a nature that requires deterrence and punishment is responsible for punitive damages? And if so, why should a vessel owner sued under the maritime doctrine of unseaworthiness be exempt from such liability?

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ANSWER TO PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

Gilbert A. Baptiste, a seaman, filed an action in the Superior Court of the State of California for the County of Los Angeles, to recover for personal injuries sustained while in the course of his employment with petitioner, the defendant in said action. Mr. Baptiste alleged three causes of action in his complaint: (1) a cause of action under the Jones Act, 46 USC §688, (2) a cause of action under the general maritime law for unseaworthiness and (3) a cause of action for maintenance and cure (Appendix A, pp. 11-13).[1] The basic injury alleged was loss of hearing, due to engine room

[1]References to Appendix A refer to the Appendix annexed to the Petition for Certiorari. Appendix A constitutes the opinion of the California Court of Appeal to which the present Petition is addressed.

noise in the vessels upon which Mr. Baptiste worked, and which were owned by petitioner.

In the course of pretrial proceedings, Mr. Baptiste discovered that during the period of his employment with petitioner-defendant, petitioner-defendant had become fully aware that these noise levels would cause permanent loss of hearing to seamen working on these vessels (Appendix A at pp. 3-4). Petitioner could have eliminated this threat to its employees' hearing by the expenditure of sums of between $800 and $6,500 per vessel (*id.* at p. 4). Petitioner consciously decided not to eliminate the deafening condition, and decided instead to continue to expose its employees to being deafened by it, because that was the "cheapest" solution (*ibid.*).

Upon discovering the foregoing, Mr. Baptiste moved to amend his complaint to allege a cause of action for punitive damages (Appendix A at pp. 4-5). This motion was granted by the California Superior Court (*id.* at p. 5). Petitioner then moved to strike the allegation, based on the contention that a vessel owner and employer of a seaman is not subject to punitive damages (*ibid.*). After various proceedings, the California Court of Appeal for the Second Appellate District held that under federal maritime law punitive damages could be recovered against petitioner upon suitable proof that it had engaged in conduct sufficiently outrageous to merit them, and that the fact that such outrageous conduct is that of a vessel owner and employer of a seaman furnishes no basis whatever for exempting petitioner from a rule applicable to virtually all other wrong-doers. The Court of Appeal therefore ordered that Mr. Baptiste be permitted to plead, and attempt to prove, that he is entitled to recover punitive damages against petitioner.

The case has not yet been brought to trial, and no judgment, final or otherwise, has yet been rendered. Neverthe-

less, by its instant petition, petitioner wishes this Court to grant a Writ of Certiorari, for the purpose of ordering the California Superior Court: (1) to strike Mr. Baptiste's pleading alleging that petitioner's conduct warrants a punitive damage award and (2) to conduct the trial of the instant case without reference to any punitive damage claims. Petitioner does not wish the trier of fact to hear or determine the question concerning whether petitioner's conduct warrants a punitive damage award and, to that end, petitioner asks this Court to intervene at the pretrial stage of this proceeding.

Summary of Argument.

1. The petition should not be entertained because the order of the Court of Appeal denying petitioner's motion to strike the punitive damage allegations is not a final judgment or decree, as required by 28 USC §1257 (see Point I, *infra*).

2. The petition should not be entertained because the decision of the Court of Appeal is correct. No authority whatever exists for creating an exception to the well-settled rule that a defendant is responsible for punitive damages where the proof of such defendant's conduct establishes that such damages are warranted (see Point II, *infra*).

ARGUMENT.

I.

The Order Sought to Be Reviewed Herein Is Not a Final Judgment or Decree. It Is a Pretrial Ruling in the Nature of a Ruling on a Demurrer. It Is Thus Clearly Not Within This Court's Jurisdiction. 28 USC §1257.

As pointed out above, petitioner asks this Court to review on certiorari an order denying a motion to strike certain allegations of respondent's pleading filed in the California Superior Court. This case has not yet proceeded to trial.[2] Regardless of the issue of punitive damages, this case must be tried on the issue of petitioner's liability on the various causes of action for compensatory damages, and on the issue of the nature and amount of such damages. These issues involve the application of federal law. The issue of punitive damages thus is not the only federal issue in this case. And trial of such issue will not even appreciably affect the trial time of this case.

It is, of course, possible that the result of a trial of this case will render the issue of punitive damages moot. The trier of fact could make a factual determination that the evidence adduced at the trial with respect to petitioner's conduct does not warrant an assessment of punitive damages. If, in fact, punitive damages are assessed against petitioner by the trier of fact, petitioner will have a right, pursuant to California law, to a review of that determination on appeal from a judgment against it. And such an appeal will review *concrete evidence*, and *not merely pleading allegations*.

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[2]The trial date is presently scheduled for April, 1981.

The statute which petitioner claims confers jurisdiction on this Court is 28 USC §1257(3) (Petition for Writ of Certiorari at p. 1). That statute plainly limits this Court's jurisdiction to consideration of "*(f)inal* judgments or decrees rendered by the highest court of a State in which a decision could be had." (emphasis added). Petitioner's petition to this Court nowhere states on what basis petitioner claims that the instant order can possibly be considered a final judgment or decree. We are therefore unable to fathom the foundation on which petitioner seeks to invoke the jurisdiction of this Court, since all of the authorities uniformly hold that an order such as the present order is not a final judgment or decree, within the meaning of 28 USC §1257.

Petitioner's motion to strike certain allegations of respondent's complaint was akin to a demurrer, and California law considers it as such. See, *e.g., Lavine v. Jessup,* 48 Cal. 2d 611, 311 Pac. 2d 8 (1957). See, generally, 3 Witkin, "California Procedure" (2d ed.), Pleading, §§860-868, pp. 2464-2470. Such motions to strike are used under California practice to attack the allegations of a party's pleadings for legal or factual insufficiency. *Lavine v. Jessup, supra.* See also *Wilson v. Sharp,* 42 Cal. 2d 675, 268 Pac. 2d 1062 (1954); *Sullivan v. Wright,* 124 Cal. App. 2d 836, 269 Pac. 2d 671 (1954). In the present case, petitioner's motion to strike performed the precise function of a demurrer, since it asserted the claim that the allegations of the pleading respecting punitive damages were legally insufficient on their face.

It is well-settled that the action of the highest state court with respect to a lower court's ruling sustaining or overruling a demurrer, motion to dismiss, or similar pretrial motion, is not a final judgment or decree, as that term is used in 28 USC §1257. See, *e.g.: Southern Pac. Co. v. Gileo,* 351 U.S. 493 (1956); *Missouri & K.I.R. Co. v. Olathe,* 222

U.S. 185 (1911); *Werner v. Charleston*, 151 U.S. 360 (1894); *Meagher v. Minnesota Thresher Mfg. Co.*, 145 U.S. 608 (1892); *Bostwick v. Brinkerhoff*, 106 U.S. 3 (1882); *Zeller v. Switzer*, 91 U.S. 487 (1875).

And in *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467, 468 (1978), this Court said:

> "Federal appellate jurisdiction generally depends on the existence of a decision [there, by the District Court] that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment [citation].' * * * To come within the 'small class' of decisions excepted from the final-judgment rule . . ., the order must conclusively determine the disputed question, *resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment.*"
>
> 437 U.S. at pp. 467, 468 (emphasis added).

Any exceptions to the foregoing rule, if any, are of very limited application, and, as previously observed, petitioner has not even attempted to explain how the instant circumstances could conceivably come within any such exception.[3]

An example of the rare circumstance where a seemingly non-final order was held to be "final" for purposes of §1257 appears in *American Export Lines, Inc. v. Alvez*, ... U.S. ...., 100 S. Ct. 1673 (1980). Therein, plaintiff brought an action for negligence and unseaworthiness, and sought leave to amend his complaint to add his spouse as a plaintiff for loss of society. This Court held that the finality requirement was satisfied, because the case had been tried, and only the

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[3]It was obviously incumbent on petitioner to establish jurisdiction in its petition. Perhaps petitioner was contemplating purporting to meet this issue in a reply brief, on the hypothesis that respondent would not be accorded any meaningful opportunity to respond. Such a procedure would not, we respectfully submit, be proper.

federal question before this Court remained in the litigation (100 S. Ct. at pp. 1675-1676). However, this Court reiterated the general rule that an order with respect to a pleading is not a final order (*id.* at p. 1675).

It is clear that the case at bar squarely comes within the general rule, and not within one of the rare exceptions thereto. Petitioner is requesting this Court to examine this case piecemeal, and to render an advisory opinion on a question which might prove to be unnecessary and irrelevant to a complete disposition of the litigation.

It is respectfully submitted that the instant petition should be denied on this ground alone.

II.

The Decision of the California Court of Appeal Is Clearly Correct. No Authority Whatever Exists for a Conclusion That There Should Be Created for the Benefit of Petitioner an Exemption From the Well-Settled Law That a Defendant May Be Liable for Punitive Damages Where Its Conduct Warrants It.

A. It Is Well-Settled That Punitive Damages Are Recoverable Under the General Common Law and Under Maritime Law. It Is Therefore Clear That They May Be Recovered Pursuant to Plaintiff's Cause of Action Under Maritime Law for Unseaworthiness.

It is well-settled under the basic common law that a defendant may be liable in punitive damages where its conduct warrants it. This fundamental proposition is set forth in the very first chapter of the leading text authority on the subject of torts. Prosser, "Law of Torts" (4th ed. 1971). Therein, the author states that *punitive damages "are an established part of our legal system,* and there is no indication of any

present desire or tendency to abandon them." (Prosser, *supra*, §2, p. 11 [emphasis added])[4]

This right to recover punitive damages is universally recognized in the federal common law (see, *e.g.*, *Lake Shore & C. Railway Co. v. Prentice*, 147 U.S. 1 [1893]), and has been repeatedly recognized in maritime law and the law of admiralty. See, *e.g.*: *The Amiable Nancy*, 16 U.S. (3 Wheat.) 546 (1818) (marine trespass); *Gallagher v. The Yankee* (C.C.N.D. Cal. 1859) 9 Fed. Cas. 1091 (No. 5196), aff'd 30 Fed. Cas. 781 (No. 18124) (involuntary transporting of plaintiff); *In Re Marine Sulphur Queen*, 460 Fed. 2d 89, 105 (2d Cir. 1972), cert. den., 409 U.S. 982 (1972) (dictum that punitive damages may be awarded where defendant's conduct warrants it); *Gunnip v. Warner Co.*, 43 F.R.D. 365 (E.D. Pa. 1968) (plaintiff permitted to amend complaint in Jones Act action to include punitive damages against vessel owner); *Petition of Den Norske A.A/S.*276 F. Supp. 163 (N.D. Ohio 1967) (holding that punitive damages are recoverable in admiralty and under the Jones Act), reversed, *United States Steel v. Fuhrman*, 407 Fed. 2d 1143 (6th Cir. 1969) (reversing because the evidence failed to establish corporate liability for the misconduct, but indicating that punitive damages *are* recoverable against the owner of a vessel when the owner authorized or ratified the objectionable conduct); *Ralston v. The States Rights*, 20 Fed. Cas. 201 (No. 11,540) (E.D. Penn. 1836) (punitive damages may be awarded against the owners of a vessel); *Boston Mfg. Co. v. Fiske*, 3 Fed. Cas. 957 (No. 1681) (C.C. Mass. 1820) (dictum that punitive damages may be recovered in

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[4]Indeed, petitioner concedes, albeit grudgingly, that punitive damages are a virtually universal part of the common law in the United States (Petition, p. 18, FN 12). Petitioner is able to cite only four jurisdictions in the United States which, petitioner claims, do not allow them (Nebraska, New Hampshire, Louisiana and Washington).

cases of maritime torts); *Kwak Hyung Rok v. Continental Seafoods, Inc.*, 462 F. Supp. 894 (D.C. Ala. 1978), affirmed 614 Fed. 2d 292 (5th Cir. 1980) (dictum that punitive damages may be recovered in a maritime action where a defendant's conduct is accompanied by wilful, wanton or malicious acts or the equivalent); *Renner v. Rockwell Inc. Corp.*, 403 F. Supp. 849, 852 (D.C. Cal. 1975) (holding punitive damages are recoverable in an action for wrongful death under general maritime law), reversed on other grounds, 587 Fed. 2d 1030 (9th Cir. 1978) (holding action barred by statute of limitations). See also: 2 Sutherland, "Damages," §392 (4th ed. 1916) and 2 Sedgwick, "Damages," §599(b) (9th ed. 1912).

Conversely, there is no authority anywhere that holds that punitive damages may *not* be recovered against a defendant under maritime law. Thus, by the instant petition, petitioner asks this Court to carve an anomalous exception to the universal rule of law allowing punitive damages, based on petitioner's *status* as a vessel owner and employer of a seaman.

Petitioner has not set forth any reason whatever why it should be accorded such unique favored treatment. Thus, the issue here is not the correctness or desirability of the universal rule permitting punitive damages to be recovered. The issue is whether one particular class of defendants should be exempt from the operation of this rule for no reason at all.

As we understand petitioner's argument, it is based on the premise (questionable, as will be seen [subsection B, *infra*]) that the Jones Act precludes recovery for punitive damages (Petition, Points II and III, pp. 5-11). From this premise, petitioner arrives at the conclusion that punitive damages are *also* barred under the maritime law (Petition, Point IV, pp. 11-13).

However, it is well-settled that whatever the result under the Jones Act cause of action pleaded by respondent (as to which, see subsection B, *infra*), the claim under the maritime doctrine of unseaworthiness is a separate and distinct claim from that under the Jones Act. This Court has made this proposition painstakingly clear.

Thus, in the recent decision of this Court in *American Export Lines, Inc. v. Alvez, supra,* .... U.S. ...., 100 S. Ct. 1673 (1980), plaintiff brought an action against a vessel owner under the maritime doctrine of unseaworthiness. As indicated above, plaintiff sought leave to add his spouse as a plaintiff on a claim for loss of society.

The vessel owner in *Alvez* advanced the identical argument that petitioner herein asserts — that no right to recover has been recognized under the Jones Act (or the Death on the High Seas Act [DOHSA]), and that therefore there could be no recovery under the general maritime law (100 S. Ct. at p. 1677).

This Court rejected that argument. This Court held that neither the Jones Act nor DOHSA "embodies an 'established and inflexible' rule" foreclosing recognition of a claim under general maritime law (100 S. Ct. at p. 1678). This Court said that the Jones Act may not be read "as sweeping aside general maritime law remedies." (*ibid.*).

This Court said:

> "the Jones Act does not exhaustively or exclusively regulate longshoremen's remedies. [citations]. *Furthermore, the Jones Act lacks such preclusive effect even with respect to true seamen; thus, we have held that federal maritime law permits the dependents of seamen killed within territorial seas to recover for violation of a duty of seaworthiness that entails a stricter standard of care than the Jones Act.* [citations].
>
> "*Apart from the question of statutory pre-emption,*

the liability schemes incorporated in DOHSA and the Jones Act should not be accorded overwhelming analogical weight in formulating remedies under general maritime law. The two statutes were enacted within days to address related problems — yet they are 'hopelessly inconsistent with each other.' [citation]. *The Jones Act itself was not the product of careful drafting or attentive legislative review* [citation]; *assuming that the statute bars damages for loss of society, it does so solely by virtue of judicial interpretation of the Federal Employers' Liability Act,* 45 U.S.C. § 51 *et seq.*, which was incorporated into the Jones Act [citation]. *Thus, a remedial omission in the Jones Act is not evidence of considered congressional policymaking that should command our adherence in analogous contexts.*''

100 S. Ct. at pp. 1678-1679 (emphasis added)

This Court then reiterated the basic principle that admiralty jurisprudence ''has always been inspirited with a 'special solicitude for the welfare of those men who under[take] to venture upon hazardous and unpredictable sea voyages.' '' (100 S. Ct. at p. 1679).

Numerous other authorities similarly establish that claims under the maritime law doctrine of unseaworthiness are separate and distinct from claims under the Jones Act. See, *e.g.*: *Moragne v. States Marine Lines,* 398 U.S. 375, 399 (1970); *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 548 (1960); *Seas Shipping Co. v. Sieracki,* 328 U.S. 85, 94, 95 (1946).

And the authorities similarly establish that the measure of damages under the general maritime law *is based upon the prevailing general law,* and *not* upon the terms of particular statutes such as the Jones Act or DOHSA. Thus, for example, in *American Export Lines, Inc. v. Alvez, supra,* this Court held that recovery for loss of society should be

permitted *on the basis of "prevailing views"* about compensation for loss of society, *regardless of whether or not it is allowed under the Jones Act or DOHSA* (100 S. Ct. at p. 1679 [emphasis added]). And in *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 584 (1974), this Court held that recovery for loss of society would be permitted on the basis of "numerous" state statutes allowing such recovery. The fact that such recovery is apparently not permitted under DOHSA is immaterial. And in *Moragne v. States Marine Lines, Inc., supra*, 398 U.S. 375 (1970), this Court held that where the rule permitting recovery for wrongful death is in force in the overwhelming majority of jurisdictions by statute, the general maritime law will follow the majority rule.[5]

It is therefore clear that punitive damages may be recovered under general maritime law, on the cause of action for unseaworthiness, regardless of the state of the law with respect to the Jones Act.

Moreover, as we will now show, there is nothing in the Jones Act, or the decisions thereunder, which compels the conclusion that punitive damages are not recoverable under the Jones Act.

B. Punitive Damages May Also Be Recovered Under the Jones Act.

By reason of the fact that, as just shown, punitive damages are recoverable on the cause of action under the general maritime doctrine of unseaworthiness, it is unnecessary to determine whether or not punitive damages are also re-

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[5]In view of the foregoing authorities, we are at a complete loss to comprehend the basis upon which petitioner can advise this Court that "federal decisional law is unwavering in its view that the same measure of compensatory damages must be recovered in actions based on unseaworthiness and the Jones Act" (Petition at p. 13). It is manifest that petitioner's attempt to invoke this Court's jurisdiction on the basis of this totally inaccurate statement (see Point IV of Petition at pp. 11-13) is utterly without merit.

coverable under the Jones Act (And, in fact, the California Court of Appeal made no ruling on this issue [see subsection C, *infra*]). Nevertheless, we will briefly discuss this proposition, since petitioner asserts in its brief that Jones Act cases are somehow exempt from the universal rule that punitive damages are awardable when the facts warrant it (Petition at pp. 5-7).

No authority has ever proclaimed such a rule. The cases cited by petitioner in purported support thereof (Petition at pp. 5-7) do not rule on the question. The only authorities that have discussed it have recognized that punitive damages are recoverable under the Jones Act. See, *e.g., Gunnip v. Warner Co., supra; Petition of Den Norske A.A/S., supra.*

Petitioner urges that the Jones Act is governed by FELA precedents, and that it has been held by one Circuit Court of Appeals, in *Kozar v. Chesapeake & Ohio R. Co.*, 449 Fed. 2d 1238 (6th Cir. 1971), that punitive damages are not recoverable under the FELA (Petition, Point III at pp. 7-11).

It is, however, well settled that the Jones Act is not *necessarily* controlled by FELA precedents. Thus, in *Cox v. Roth*, 348 U.S. 207 (1955), this Court stated that the provisions of the FELA should not be mechanically applied to maritime claims, but that the maritime setting must be considered in interpreting the Jones Act. And in *Vickers v. Tumey*, 290 Fed. 2d 426 (5th Cir. 1961), the Court of Appeals pointed out that because we are dealing "with a statute transplanted from the switchyard to navigable waters," the incorporation of the FELA by the Jones Act did not require identical standards and application (290 Fed. 2d at p. 429). This would be "clearly wrong because it would ignore the essential differences in conditions and circumstances of employment." (*id.* at pp. 429-430). *An important and significant factor supporting a distinction*

"is the traditional idea of the duty to provide a seaworthy vessel." (*id.* at p. 430 [emphasis added]).[6] It is therefore clear that the anomalous decision in *Kozar, supra,* is not determinative, even were the present action solely a Jones Act case and even if it did not also involve a cause of action under the general maritime law.[7]

C. The California Court of Appeal Properly Applied Federal Decisional Law to the Pleading in This Case.

Petitioner's final point (Point V at pp. 13-19 of Petition) is, in essence, that the California Court of Appeal had no power to make a ruling with respect to an issue of federal law presented to it by reason of state court jurisdiction to hear cases brought by injured seamen invoking maritime law and the Jones Act. This point is manifestly without merit. The California Court of Appeal was required to rule on the applicable federal law. It properly applied the federal law to the issues before it, and properly refused to bestow on petitioner an unprecedented and anomalous immunity not found in the applicable federal law.

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[6]Cogent support for the distinction is demonstrated by the fact that the seaman is confined to a vessel at sea, and is therefore forced against his will to submit to unsafe working conditions for extended periods of time. A railroad worker, on the other hand, may be subjected to such conditions during the course of a work day, after which he may call the condition to the attention of his employer, request correction of the condition and refuse to continue to work in an unsafe enviornment. The deliberate refusal to correct an unsafe work enviornment is thus clearly more blameworthy in connection with a vessel than in connection with a railroad.

[7]*Kozar* involved a claim for punitive damages for wrongful death, and the Court of Appeals therein relied primarily upon dictum in cases ruling on wrongful death actions (see, *e.g.*, 449 Fed. 2d at pp. 1241-1243). The cases relied on are outmoded, and were influenced by the old rule that wrongful death damages were not recoverable in the absence of a statute specifically authorizing same. Subsequent to those cases, this Court held that this " 'barbarous' " common law rule will no longer be applied, and certainly not in maritime cases. *Moragne v. States Marine Lines, Inc, supra,* 398 U.S. 375, 381 (1970).

Contrary to petitioner's assertions (Petition at pp. 16-19), the California Court of Appeal did not expand any federal statute. That Court pointed out the well-settled rules that punitive damages are part of the general common law (opinion of the Court of Appeal, Appendix A, annexed to petition, at pp. 7-8), the federal common law (*id.* at pp. 8-9) and the federal maritime law (*id.* at pp. 9-11, 14-17). The Court of Appeal therefore held that punitive damages were recoverable on the cause of action under maritime law for unseaworthiness (*id.* at pp. 19, 20).

The Court of Appeal addressed defendant's argument that punitive damages cannot be awarded under the Jones Act, by reason of the FELA decision in *Kozar, supra* (Appendix A at pp. 17-18). The Court noted that if the Jones Act cause of action was controlled by the *Kozar* decision, "it would appear that punitive damages would be barred on *that* cause of action" (*id.* at p. 18 [emphasis in original]). The Court noted cases indicating that punitive damages *could* be recovered under the Jones Act (*id.* at pp. 14-17), and therefore expressed doubt that *Kozar* controlled (*id.* at p. 18). The Court then said that, in any event, "neither *Kozar* nor any of its progeny can be permitted to place limitations on a seaman's cause of action founded on general maritime law that recognizes the unseaworthiness doctrine." (*ibid.*)

The Court then said:

> "While there is considerable overlapping between Jones Act negligence and the doctrine of unseaworthiness, there is simply neither authoritative precedent nor reasons of policy for imposing whatever limitations exist in Jones Act litigation on general federal admiralty law, from which the doctrine of unseaworthiness is derived."
>
> Appendix A at p. 19.

The Court concluded that "there is sufficient authority in federal *admiralty* law" to support recovery of punitive damages (Appendix A at p. 20 [emphasis added]).

It is thus clear that the Court of Appeal did not rule on whether or not punitive damages could be recovered on the cause of action under the Jones Act. Its holding was limited to the unassailable conclusion that the general maritime law did not exempt a ship owner from a liability for punitive damages that has been part of the general law, the common law and the maritime law of this country from its inception.

There is therefore no basis whatever for petitioner's claim that the instant decision expanded a federal statute.

Conclusion.

No final judgment or decree has been rendered herein, and hence jurisdiction is absent. Moreover, the decision of the California Court of Appeal is manifestly correct on the merits. Punitive damages are clearly recoverable under the general common law and under maritime law. Petitioner's attempt to secure for itself a special privilege and immunity from the operation of this law — and to avoid a trial on the merits of the factual issues respecting its conduct — is without merit and does not commend itself to the attention of this Court.

The petition should therefore be denied.

Respectfully submitted,

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